

The interim use exemption is available to persons primarily engaged in selling tangible personal property when such persons lease property that is carried on their books as inventory or is otherwise available for sale during the lease period. See 86 Ill. Adm. Code 150.306. (This is a GIL).

April 1, 2002

Dear Xxxxx:

This letter is in response to your letter dated January 21, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be accessed at the Department's Website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

We are writing on behalf of a client engaged in multiple businesses, including aircraft sales and aircraft charter services. The client is requesting clarification of an Illinois use tax law, specifically Illinois Statute, 35 ILCS 105/2.

Background:

The client's sales corporation (sales) purchases aircraft. Some of the aircraft are leased to the client's charter operations company (charter). These aircraft are exempt from Illinois sales and use tax as interstate carriers for hire. These aircraft are listed on the client's FAA Charter Certificate. If a customer wanted to purchase a particular plane leased to charter they could do so, and another plane would be leased to charter in its place.

After a plane has been used by charter for a certain amount of airtime the plane's lease is cancelled and the plane is returned to sales. The planes may be returned for various reasons, including not wanting to put too many miles on the aircraft or engines so that the plane maintains its sales value. After the plane is returned to sales it is generally only flown for customer demonstration purposes or for customer inspection.

Issue:

35 ILCS 105/2 provides that an aircraft can be used for demonstration or other interim use without sales or use tax being due on the aircraft. According to 35 ILCS 105/2(c), regarding watercraft and aircraft 'if the period of demonstration use by the retailer exceeds 18 months, the retailer shall pay Use Tax on the original cost price of the

aircraft...and no credit for that tax is permitted if the aircraft or watercraft is subsequently sold by the retailer.'

The client's specific question is when does the 18-month demonstration period referred to in 35 ILCS 105/2 begin? The client's understanding is that the 18-month period begins when the aircraft comes off of the lease and is returned to the sales corporation. They have asked that we confirm this to be the case.

Would it matter what types of accounts the plane is held in by sales corp? Planes could be moved from an inventory account to a leased asset account when they are first leased and then back to inventory when the lease expires or is cancelled if this would have any effect on the running of the 18-month demonstration period.

Conclusion:

It would seem that the 18-month demonstration period should begin when the lease is cancelled or expires and the aircraft is transferred from charter back to sales, as this is this period it is actively held for sale and when the demonstration use referred under this section begins. Before this time demonstration use should not be an issue because the plane is exempt as an interstate carrier for hire. The 18-month limitation is for items held in sales inventory, and that is why we believe the 18-month exemption period should begin when the plane comes off of the lease.

The plane is not sold as an incident to the company's leasing activities. Both the aircraft sales operations and the charter operations are important components of the client's business. Also, the plane is always available for sale throughout the lease term. This arrangement is an easy way for charter to offer customers new planes in its charter business, while keeping high value planes available for sale.

It is our understanding that the intent of the law is to keep a retailer from using aircraft or watercraft for personal, recreational uses, without paying sales or use tax on it. Our client is not holding the aircraft for personal use. In fact, after the planes come out of charter operations the client's goal is put the fewest possible miles on the aircraft so that the value does not decrease. While the plane is in charter, if another related company wishes to use it, they pay the same charter fee as any other customer, so personal usage is not occurring at this time either.

Thank you for your consideration of this matter, we look forward to hearing your response.

DEPARTMENT'S RESPONSE

The Department's regulation, 86 Ill. Adm. Code 150.306, that describes the Interim Use and Demonstration Exemption, states in Subpart (a)(1):

"...tangible personal property purchased by a retailer for resale, and used by the retailer or his agents prior to its ultimate sale at retail, is exempt from Use Tax, provided that the tangible personal property is carried as inventory on the books of the retailer or is otherwise available for sale during the interim use period."

Subpart (b)(1) and (2) states in part that:

"Tangible personal property purchased for resale and used by its owner for demonstration purposes is not subject to Use Tax."

"The leasing of tangible personal property by a retailer to prospective buyers for the purpose of allowing them to ascertain whether or not the property suits their particular needs and for the purpose of trying to induce them to buy such property is a use for demonstration purposes..."

The 18-month rule you reference in 35 ILCS 105/2 is codified at Subpart (c) wherein it states:

"For watercraft or aircraft, if the period of demonstration use or interim use by the retailer exceeds 18 months, the retailer shall pay Use Tax on the original cost price of the aircraft or watercraft, and no credit for that tax is permitted if the aircraft or watercraft is subsequently sold by the retailer. For purposes of this Section, the term "watercraft" means a Class 2, Class 3 or Class 4 watercraft as defined in Section 3-2 of the Boat Registration and Safety Act [625 ILCS 45/3-2], a personal watercraft, or any boat equipped with an inboard motor."

Based upon these provisions, the demonstration or leasing of an aircraft by a person primarily engaged in the business of selling such property at retail falls within the scope of the demonstration use exemption from Use Tax provided that the aircraft is carried as inventory on the books and ultimately sold, or is otherwise available for sale during the relevant period. The ultimate sale of the aircraft subsequent to the demonstration use will result in Retailers' Occupation Tax liability.

You represent that your client initially uses the aircraft by leasing to a charter business who operates as an interstate carrier for hire. You further represent that these charter planes are always available for sale. The 18-month demonstration period for interim use of aircraft begins at the time of purchase. The fact that a plane's initial use may qualify for an exemption, such as rolling stock, does not delay or suspend the running of the 18-month period. Therefore, if an aircraft were not sold prior to expiration of the 18-month period, the retailer would incur Use Tax liability on the aircraft pursuant to 35 ILCS 105/2.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

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